

Villa Capri Homes, Inc., d/b/a Villa Capri Manor and Nursing and Convalescent Home Division of Local 50, Service Employees International Union, AFL-CIO, CLC, Petitioner. Case 14-RC-9609

27 February 1984

DECISION AND DIRECTION

The National Labor Relations Board has considered objections to an election held 12 August 1982 and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 59 for and 52 against Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the Employer's exceptions and brief and has adopted the Regional Director's findings and recommendations only to the extent consistent with this Decision and Direction.

In his report, the Regional Director recommended that the Employer's objections be overruled in their entirety, that other acts and conduct not specifically alleged also be considered unobjectionable, and that the Union be certified as bargaining representative. We disagree. Certain conduct of a serious and aggravated nature included in the section, "Other Acts and Conduct Not Specifically Alleged" of the Regional Director's report, specifically, *Part C—Smoke Bomb Incidents*, *Part D—Recording of License Plate Numbers of Vehicles*, *Part E—Fires at the Employer Facility*, and *Part G—Vandalism*, raise substantial and material issues warranting a hearing. These incidents, if proven, and when considered in their totality, may create a general atmosphere of fear and coercion rendering a free choice in the election impossible. Therefore, we direct a hearing¹ with regard to the incidents identified above.

DIRECTION

It is directed that a hearing be held before a hearing officer for the purpose of receiving evidence to resolve the issue raised by Parts C, D, E, and G of the portion of the Regional Director's report entitled "Other Acts and Conduct Not Specifically Alleged." After the hearing, the hearing officer shall serve his report on the parties. Within 10 days from issuance of the report, either party may file exceptions to the report with the Board in Washington, D.C. An original and seven copies of

the exceptions must be filed. Copies must be served on all parties and with the Regional Director. If no exceptions are filed, the Board will adopt the recommendation of the hearing officer.

IT IS FURTHER DIRECTED that this case is remanded to the Regional Director for Region 14 for the purpose of taking action consistent with this decision.

MEMBER ZIMMERMAN, dissenting.

The majority has remanded this case for hearing to determine whether conduct included in the section, "Other Conduct Not Specifically Alleged" of the Regional Director's report occurred and whether it may have affected the election. The conduct in issue includes smoke bombing incidents, a report of car license plate numbers being recorded, incidents of vandalism, and a number of fires at the Employer's facility. As the attached Regional Director's report indicates, none of the incidents was shown to have any relationship to the Petitioner or its organizing campaign. For example, the Employer presented four witnesses who gave statements regarding incidents of smoke bombings. In no instance did they indicate that the conduct was attributable to the Petitioner; to the contrary, in at least one case the perpetrator was identified and her motive was related to marital problems. Accordingly, I find the incidents in question as well as the Employer's exceptions raise no material or substantial issues of fact or law which would warrant reversal of the Regional Director's recommendation or require a hearing. I would certify the Petitioner as exclusive bargaining representative in the unit involved.

REGIONAL DIRECTOR'S REPORT ON OBJECTIONS AND RECOMMENDATIONS

Pursuant to a petition filed on June 18, 1982,¹ and a Stipulation for Certification Upon Consent Election approved by the Regional Director on July 9, an election was conducted on August 12, among employees of the Employer in the following-described appropriate collective-bargaining unit:

All full-time and regular part-time service and maintenance employees employed at the Employer's 2920 Fee Fee Road, Maryland Heights, Missouri, facility, including nurses aides, dietary employees, laundry workers, housekeeping employees, maintenance employees, activity department personnel, physical therapy aides, certified medication technicians, but EXCLUDING all licensed practical nurses, dietary technicians, business office clerical employees, including the nursing secretary, profes-

¹ We note that a hearing might reveal in greater detail than did the investigation the relationship, if any, between the Petitioner and the individuals who allegedly engaged in the conduct here.

¹ All dates are in the year 1982, unless otherwise specified.

sional employees, guards and supervisors as defined in the Act.

The tally of ballots served upon the parties at the conclusion of the election discloses the following results:

Approximate number of eligible voters-142
 Void ballots-0
 Votes cast for Petitioner-59
 Votes cast against participating labor organization-52
 Valid votes counted-111
 Challenged ballots-1
 Valid votes counted plus challenged ballots-112

Challenges are not sufficient in number to affect the results of the election.

A majority of the valid votes counted plus challenged ballots has been cast for Petitioner.

Timely objections to conduct affecting the results of the election were filed by the Employer on August 19.²

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the Regional Director has caused a full and complete investigation to be made of the objections. By letters dated August 26 and September 3, the Employer submitted the names and addresses of witnesses expected to give testimony in support of the objections, a brief description of such testimony, and documentary evidence in support of the objections. The Petitioner presented witnesses in support of its position with respect to the Employer's objections. All evidence adduced during the investigation has been fully and carefully considered by the Regional Director who reports thereon and recommends as follows:

Background

The Employer is a Missouri corporation engaged in the operation of a nursing home located at 2920 Fee Fee Road, Maryland Heights, Missouri, the sole facility involved herein. At the time of the election, there were approximately 142 employees in the above-described unit under the general supervision of Administrator Larry Boschert.

The Objections

Objection 1

In its first objection, the Employer alleges that the "Petitioner, by its officers, agents, representatives, and members, did coerce and induce Employees of the Employer by threatening Employees with loss of their jobs if they failed to support the Union in the election." The Petitioner denies that any representative or agent of the Petitioner engaged in the conduct alleged in this objection.

In support of this objection, the Employer presented five employee witnesses, each of whom states in their respective sworn statements that no representative of the Petitioner or any employee of the Employer threatened

employees with loss of employment should employees fail to support the Petitioner in the election conducted herein. In other respects, the Employer failed to present, and the investigation failed to adduce, evidence that the Petitioner threatened employees with loss of employment for failing to support the Petitioner in the election conducted herein.

In these circumstances, the undersigned concludes that the conduct alleged in this objection is not supported by the evidence presented or adduced in the investigation.

Accordingly, the undersigned recommends that Objection 1 be overruled.

Objection 2

In its second objection, the Employer alleges that the "Petitioner, by its officers, agents, representatives, and members, threatened Employees with destruction of their premises and property if they failed to support the Union or if they refrained from participating in the election process." Specifically, the Employer contends that the members of the Petitioner's organizing committee threatened employees with physical harm if employees failed to support the Petitioner in the election conducted herein. The Petitioner denies that any representative or agent of the Petitioner engaged in the conduct alleged in this objection.

In support of this objection, the Employer presented five employee witnesses, the first of whom states in a sworn statement that no representative of the Petitioner or any employee of the Employer threatened the first employee witness with physical harm for failure to support the Petitioner. The remaining employee witnesses each state in their respective sworn statements that no representative of the Petitioner or any employee of the Employer threatened the witnesses with destruction of personal property or physical harm if employees failed to support the Petitioner or if employees refrained from participating in the election conducted herein. In other respects, the Employer failed to present, and the investigation failed to adduce, evidence that the Petitioner threatened employees with destruction of property or with physical harm if employees failed to support the Petitioner or refrained from participating in the election conducted herein.

In these circumstances, the undersigned concludes that the conduct alleged in this objection is not supported by the evidence presented or adduced in the investigation.

Accordingly, the undersigned recommends that Objection 2 be overruled.

Objection 3

In its third objection, the Employer alleges that the "Petitioner, by its officers, agents, representatives, and members, did promise specific monetary benefits to Employees and former Employees conditional upon how Employees voted and the Union winning the election." Specifically, the Employer contends that agents of the Petitioner told employees that employees recently discharged by the Employer would be reinstated due to their support for the Petitioner contingent upon employees selecting the Petitioner as their bargaining representa-

² A copy of the Employer's objections is attached hereto and marked as Exhibit 1.

tive in the election conducted herein and that this promise of benefit for employees who actively supported the Petitioner constitutes an inducement of value providing grounds for setting aside the election. The Petitioner denies that any representative or agent of the Petitioner engaged in the conduct alleged in this objection.

In support of this objection, the Employer presented five employee witnesses, the first of whom states in a sworn statement that during late July or early August, she engaged in a conversation with five nurses' aides during a lunch break at the Employer's facility; that during this conversation one of the aides remarked that the Petitioner was attempting to obtain reinstatement for an employee who was discharged by the Employer during the organizing campaign; that the witness does not recall which aide made the remark; that the witness does not recall the names of all the aides present during this conversation; and that during this conversation no aide said that the discharged employee would be reinstated due to support for the Petitioner or because the Petitioner was selected as the bargaining representative of employees. The first employee witness further states in a sworn statement that she has no knowledge as to whether the nurses' aides involved in the aforementioned conversation supported the Petitioner in the election conducted herein; that the nurses' aide making the aforementioned remark did not state from whom such information was obtained; that the nurses' aide making the aforementioned remark did not state that she was authorized to speak to employees on behalf of the Petitioner, and that the first employee witness has no knowledge as to whether the nurses' aide making the aforementioned remark has ever been employed by the Petitioner in any capacity or received any compensation from the Petitioner for activities on behalf of the Petitioner.

The remaining employee witnesses each state in their respective sworn statements that no representative of the Petitioner or any employee of the Employer said that employees discharged by the Employer would be reinstated because of the discharged employees' support for the Petitioner or contingent upon the Petitioner being selected as the bargaining representative of employees herein. The employee witnesses further state in respective sworn statements that no representative of the Petitioner or any employee of the Employer promised specific monetary benefits to employees contingent upon how employees voted or upon the Petitioner being selected as the bargaining representative of employees in the election conducted herein.

In support of its position with respect to this objection, the Petitioner presented Organizer Boneva Brown and Vice President Russell Lucas, both of whom state in their respective sworn statements that no representative or agent of the Petitioner told employees that recently discharged employees would be reinstated due to their support for the Petitioner or contingent upon the Petitioner being selected as the bargaining representative of employees in the election conducted herein; that no representative of the Petitioner promised specific monetary benefits to employees or former employees contingent upon how employees voted or upon the Petitioner being selected as the bargaining representative of employees in

the election conducted herein; and that the Petitioner never authorized, condoned or ratified any remarks made by employees with respect to reinstatement of discharged employees. Brown further states that at weekly meetings held by the Petitioner for employees, she advised employees that the Petitioner could file unfair labor practice charges with respect to an employees' termination during the organizing campaign and that subsequent to a decision by the Regional Director that further proceedings were warranted with respect to such charge, the appropriate remedy might include reinstatement of the discharged employee. Lucas further states that on about August 23, he advised a discharged employee to file a charge with the National Labor Relations Board. Brown and Lucas state in their respective sworn statements that the duties of employee members of the organizing committee consisted of securing authorization cards, encouraging employee attendance at Petitioner's organizing meetings, and distributing notices of organizing meetings and pamphlets prepared by the National Labor Relations Board. Brown and Lucas further state that none of the employee members of the organizing committee has been employed by the Petitioner in any capacity; that employee members of the organizing committee have never received any wages or compensation from the Petitioner for activities performed on behalf of the Petitioner; and that employee members of the organizing committee have not been authorized to speak on behalf of the Petitioner with respect to union representation or any other matter.

In these circumstances, the undersigned concludes that the conduct alleged in this objection does not provide a basis upon which the election may be set aside. Assuming, *arguendo*, that the statement of the Employer's first witness concerning the Petitioner's attempt to seek reinstatement of a discharged employee is attributable to the Petitioner, such statement falls within permissible [sic] bounds of campaign propaganda which employees can consider in relation to the position which the speaker is proposing. The Board has held that statements made by a union to employees to demonstrate the potential assistance employees may expect through union representation, without conditioning such benefits upon employees' support for the union in an election, simply sets forth an area in which the union would use its position to assist employees, and does not, therefore, provide a basis upon which the election may be set aside. *Aventura Country Club d/b/a Turnberry Isle Country Club*, 253 NLRB 416 (1980).

Accordingly, the undersigned recommends that Objection 3 be overruled.

Objection 4

In its fourth objection, the Employer alleges that "by these and other acts and conduct, the Petitioner interfered with, restrained and coerced the Employees in the exercise of their free choice, thereby preventing the holding of a free and fair election."

The undersigned concludes that Objection 4 fails to satisfy the Board's requirement of reasonable specificity in the filing of objections inasmuch as the Employer has

failed to indicate the nature of the conduct which would warrant setting aside the election and directing a new election. Therefore, the conduct alleged to have occurred in this objection does not constitute a sufficient basis upon which the election may be set aside. *Audubon Cabinet Company, Inc.*, 119 NLRB 349 (1957).

Accordingly, the undersigned recommends that Objection 4 be overruled.

Other Acts and Conduct Not Specifically Alleged

Evidence of certain other conduct was disclosed by the investigation of the objections and has been considered inasmuch as the Regional Director is not limited to the specific issues raised by the objections. *International Shoe Company*, 123 NLRB 682 (1959); *American Safety Equipment Corporation*, 234 NLRB 501 (1978).

Part A—Contracts Presented to Employees

During the investigation, the Employer presented Director of Staff Development Dorothy Levy who states in a sworn statement that on August 13, she and a certified medical technician engaged in a conversation at the Employer's facility; that during such conversation the employee said that employees of the Employer had been presented with a new contract negotiated by the Petitioner with the Delhaven Nursing Home located in St. Louis, Missouri; that the employee did not state who had presented the aforementioned contract to employees; that the employee did not state that the Petitioner had told employees that the aforementioned Delhaven contract was a new, rather than an existing, collective-bargaining agreement; and that from this conversation, Levy inferred that the Petitioner had told employees that there was a new Delhaven agreement in existence. Levy further states in her sworn statement that the Employer posted portions of the existing Delhaven contract in the breakroom of the Employer facility. The investigation disclosed that the employee engaged in the aforementioned conversation was eligible to vote in the election herein and cast a ballot without challenge by any party.

The investigation further disclosed that during the organizing campaign herein, employees received copies of collective-bargaining agreements negotiated by the Petitioner with nursing homes located in the local area from fellow employees; that at a meeting held with employees with respect to union representation, the Employer presented slides of agreements negotiated by the Petitioner with various nursing homes; and that the Employer posted copies of certain contracts negotiated by the Petitioner in the breakroom of the Employer facility.

The Petitioner denies that any conduct alleged herein provides a basis upon which the election may be set aside, and in support of its position, presented Organizer Brown and Vice President Lucas who each state in their respective sworn statements that the Petitioner negotiated a collective-bargaining agreement with the Delhaven Nursing Home; that such agreement has been in effect for approximately 2 years; that there is no "new" Delhaven contract; and that no representative or agent of the Petitioner advised employees that there was a new, rather than an existing, agreement between the Petitioner and the Delhaven Nursing Home. Brown further states

that upon being advised by employees that the Employer had posted copies of contracts between the Petitioner and the Delhaven and the Mar-Le nursing homes in the breakroom of the Employer facility in June, and in response to employee requests, during a meeting held with employees on about July 21, Brown presented employees with copies of collective-bargaining agreements between the Petitioner and the Delhaven, Mar-Le, Charvelois and Masonics nursing homes, respectively.

In these circumstances, the undersigned concludes that the conduct considered herein does not provide a basis upon which the election may be set aside. The presentation of contracts negotiated by the Petitioner with other employers to employees was conduct in which both parties engaged. Inasmuch as employees can reasonably evaluate the contracts for what they represent and render personal judgments as to the information contained therein, such conduct falls within the bounds of legitimate campaign propaganda. With respect to the aforementioned conversation between an employee and Director Levy, such conversation occurred on August 13, subsequent to the conduct of the election herein and, therefore, did not occur within the critical period for conduct affecting the results of the election. *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961). In other respects, the Employer failed to present, and the investigation failed to disclose, evidence that the Petitioner made misrepresentations with respect to agreements negotiated by the Petitioner in a deceptive manner as improperly involving the Board and its processes or distributing forged documents which render employees unable to recognize the propaganda for what it proposes. Therefore, the conduct alleged herein, if it occurred, does not provide a basis upon which the election may be set aside. *Midland National Life Insurance Co.*, 263 NLRB 127 (1982).

Accordingly, the undersigned recommends that Part A be overruled.

Part B—Anonymous Phone Call

During the investigation, the Employer presented an employee witness who states in a sworn statement that at approximately 5 a.m. on August 8, she received a telephone call at her residence, at which time a male voice said "help me." The employee witness states that she does not know the identity of the caller; that she received no further anonymous telephone calls; and that she has no knowledge that the aforementioned telephone calls was related to the Petitioner's organizing campaign. The investigation disclosed that the employee who received the anonymous phone call was a member of the Petitioner's organizing committee.

The Petitioner denies that it engaged in the conduct alleged herein and, in support of its position, presented Organizer Brown and Vice President Lucas who each state in their respective sworn statements that no representative or agent of the Petitioner placed anonymous telephone calls to employees and that the Petitioner did not authorize, condone, or ratify such conduct.

Further, the Employer failed to present, and the investigation failed to adduce, evidence as to the identity of the telephone caller.

In these circumstances, the undersigned concludes that the conduct considered herein does not provide a basis upon which the election may be set aside. The Employer did not present, and the investigation failed to disclose, evidence that the conduct is attributable to the Petitioner. *Salem No. 1, Inc., d/b/a The Seville*, 262 NLRB 1282 (1982); *J.C. Penney Company, Inc.*, 214 NLRB 445, 452 (1974).

Accordingly, the undersigned recommends that Part B be overruled.

Part C—Smoke Bomb Incidents

During the investigation, the Employer presented an employee witness who states in a sworn statement that at approximately 2 a.m. on about August 7, her ex-husband's ex-wife threw a smoke bomb through the glass storm door of her residence; that neither her ex-husband nor his ex-wife are employees of the Employer; and that this incident was unrelated to the Petitioner's organizing campaign. The investigation disclosed that the first employee witness was a member of the Petitioner's organizing committee.

The second employee witness presented by the Employer with respect to the conduct considered herein states in a sworn statement that a week prior to the date of the election, she was advised by the first employee witness that a smoke bomb had been thrown at the first employee witness' residence; that the fourth employee witness has no knowledge as to whether the first employee witness supported the Petitioner or whether this incident was related to the Petitioner's organizing campaign.

The third employee witness presented by the Employer with respect to the conduct considered herein states in a sworn statement that at about 2:50 p.m. on August 12, subsequent to casting her ballot in the election, the third employee witness engaged in a conversation with two employees of the Employer at the Employer facility, wherein one of the employees said that two nurses' aides, including the first employee witness hereinabove and an unidentified employee, had smoke bombs thrown at the aides' respective residences; and that the third employee witness has no knowledge as to whether the two nurses' aides supported the Petitioner or whether the smoke bomb incidents were related to the Petitioner's organizing campaign.

The fourth employee witness presented by the Employer states in a sworn statement that on August 13, she engaged in a conversation with first employee witness at the Employer's facility; that the first employee witness stated that a smoke bomb had been thrown at the first employee witness' residence on the evening of August 12, subsequent to the conduct of the final voting session in the election conducted herein; that the fourth employee witness had no knowledge as to whether the first employee witness supported the Petitioner; and that neither the first nor the fourth employee witnesses have any knowledge as to the identity of the individual(s) responsi-

ble for the incident or whether such incident was related to the Petitioner's organizing campaign.

The Petitioner denies that the conduct alleged herein is attributable to the Petitioner, and in support of its position, presented Organizer Brown and Vice President Lucas who each state in their respective sworn statements that no representative or agent of the Petitioner engaged in the conduct considered herein and that the Petitioner did not authorize, condone, or ratify such conduct. Organizer Brown further states that at a meeting held by the Petitioner for employees on August 11, an employee stated that a smoke bomb had been thrown at her residence; and that such employee further said that the identity of the individual(s) responsible was unknown. Vice President Lucas further states in his sworn statement that at a meeting held by the Petitioner for employees on about August 25, employees said that an employee with marital problems had had a smoke bomb thrown at her residence.

In these circumstances, the undersigned concludes that the conduct considered herein does not provide a basis upon which the election may be set aside. Also, the Employer failed to present, and the investigation failed to disclose, evidence that the conduct is attributable to the Petitioner.

Accordingly, the undersigned recommends that Part C be overruled.

Part D—Recording the License Plate Numbers of Vehicles

During the investigation, the Employer presented an employee witness who states in a sworn statement that on about August 2, the employee witness observed a man carrying a clipboard on the parking lot at the Employer's facility; that the parking lot is used by employees as well as visitors; that the man walked from vehicle to vehicle recording the license plate numbers of vehicles; that the employee witness did not recognize the individual carrying the clipboard; and that the employee witness has no knowledge that the individual carrying the clipboard is a representative of the Petitioner.

The Petitioner denies that the conduct alleged herein is attributable to the Petitioner, and in support of its position presented Organizer Brown and Vice President Lucas who each state in their respective sworn statements that no representative or agent of the Petitioner recorded license plate numbers of vehicles at the employer's facility and that the Petitioner did not authorize, condone or ratify such conduct. Brown further states in her sworn statement that approximately 3 weeks prior to the election conducted herein, seven members of the organizing committee said that a man was observed by the members recording license plates numbers of vehicles at the employer's facility.

The Employer failed to present, and the investigation failed to adduce, evidence as to the identity of the individual who recorded license plate numbers of vehicles on the parking lot of the Employer's facility.

In these circumstances, the undersigned concludes that the conduct considered herein does not provide a basis upon which the election may be set aside. Thus, assuming, *arguendo*, that an individual recorded license plate

numbers of vehicles at the Employer's facility, the Employer did not present, and the investigation failed to disclose evidence as to the identity of the individual or that the individual acted on behalf of the Petitioner. The conduct of unidentified individual is, therefore, not attributable to the Petitioner. *Interstate Cigar Co., Inc. and L.S. Amster Co., Inc.*, 256 NLRB 496, 500 (1981).

Accordingly, the undersigned recommends that Part D be overruled.

Part E—Fires at the Employer Facility

During the investigation, the Employer presented documentary evidence and six employee witnesses who state in respective sworn statements that there were incidents of arson at the Employer's facility, specifically an incident on about June 6, in a linen room and an incident on about July 23, in a shower room; that the employee witnesses have no knowledge as to the identity of the individual(s) responsible for such incidents; that an employee was arrested by the St. Louis County police with respect to certain of such incidents; that the employee witnesses have no knowledge as to whether the employee arrested supported the Petitioner in the election conducted herein; and that there have been incidents of fires at the Employer's facility prior to the filing of the petition herein.

The Petitioner denies that the conduct alleged herein is attributable to the Petitioner, and in support of its position, presented Organizer Brown and Vice President Lucas who each state in their respective sworn statements that no representative or agent of the Petitioner engaged in the conduct considered herein and that the Petitioner did not authorize, condone or ratify such conduct.

The investigation disclosed that the St. Louis County Bureau of Arson and Explosives is currently investigating the aforementioned incidents; that an employee who had discovered certain of the fires was suspended and thereafter terminated by the Employer; that such employee was arrested by the St. Louis County police with respect to the aforementioned incidents; that such employee had signed an authorization card on behalf of the Petitioner; and that such employee was not a member of the Petitioner's employee organizing committee. The investigation failed to establish that the arrested employee had ever been employed by the Petitioner in any capacity; that the arrested employee had ever received any wages or compensation from the Petitioner for activities performed on behalf of the Petitioner; or that the arrested employee had ever been authorized to act on behalf of the Petitioner with respect to union representation or any other matter.

In these circumstances, the undersigned concludes that the conduct considered herein does not provide a basis upon which the election may be set aside. The Employer did not present, and the investigation failed to disclose, evidence that the conduct is attributable to the Petitioner.

Accordingly, the undersigned recommends that Part E be overruled.

Part F—Theft of Rolodex

During the investigation, the Employer presented documentary evidence and five employee witnesses who state in respective sworn statements that by memorandum dated May 6, the Employer notified employees that on May 2, a Rolodex listing employee names and residential telephone numbers had been removed from the nursing supervisor's office at the Employer facility without Employer authorization; that the employee witnesses have no knowledge as to the identity of the individual(s) responsible for this incident; that the employee witnesses have no knowledge as to whether the aforementioned incident was related to the Petitioner's organizing campaign; and that the employee witnesses have no knowledge as to whether the aforementioned Rolodex was thereafter returned to the Employer.

The Petitioner denies that it engaged in the conduct alleged herein, and in support of its position, presented Organizer Brown and Vice President Lucas who each state in their respective sworn statements that no representative or agent of the Petitioner removed the Rolodex from the Employer facility and that the Petitioner did not authorize, condone or ratify the conduct alleged herein.

In these circumstances, the undersigned concludes that the conduct considered herein does not provide a basis upon which the election may be set aside. The removal of the Rolodex occurred on May 2, prior to the filing of the petition herein on June 18, and, therefore, such conduct did not occur within the critical period for conduct affecting the results of the election. *The Ideal Electric and Manufacturing Company, supra*.

Accordingly, the undersigned recommends that Part F be overruled.

Part G—Vandalism

During the investigation, the Employer presented four employee witnesses, the first of whom states in a sworn statement that in June, subsequent to the filing of the Petition herein, she engaged in a conversation with a nurses' aide at the Employer facility in which the aide said that, subsequent to the filing of the petition herein, the front windshield of the aide's vehicle had been broken while parked at the Employer's facility; that neither the aide nor the first employee witness has knowledge as to the identity of the individual(s) responsible for the aforementioned incident; that neither the aide nor the first employee witness have knowledge as to whether the aforementioned incident was related to the organizing campaign; that the employee witness has no knowledge as to whether the aide supported the Petitioner; and that the employee witness has no knowledge as to any other incidents of vandalism to vehicles parked at the Employer's facility.

The second employee witness presented by the Employer in support of the conduct considered herein states in a sworn statement that 1 week after the election, she engaged in a conversation with a nurses' aide other than the one who spoke to the first employee witness hereinabove at the Employer facility; that during such conversation the aide stated that the hood of the aide's vehicle had been dented; that the aide was uncertain as to whether the damage had occurred while the aide's vehi-

cle was parked at the Employer's facility; that the aide did not know the specific date on which the vehicle was damaged; that neither the aide nor the employee witness have any knowledge as to the identity of the individual(s) responsible for the damage; that the employee witness has no knowledge as to whether this incident was related to the organizing campaign; and that the employee witness has no knowledge as to other incidents of vandalism to employee vehicles parked at the Employer's facility.

The third employee witness presented by the Employer with respect to the conduct considered herein states in a sworn statement that on about August 4, she engaged in conversations with fellow employees at the Employer's facility; that she does not recall the names of the employees involved in these conversations; that during such conversations, the unidentified employees stated that on about August 4, batteries had been stolen from vehicles of two employees, one tire of another employee's vehicle was slashed and the front windshield of another employee's vehicle was smashed, while the vehicles were parked at the Employer's facility; that the employee witness does not know the identity of the victims of this vandalism; that the employee witness has no knowledge as to the identity of the individual(s) responsible for the vandalism or whether such incidents were related to the Petitioner's organizing campaign. The third employee witness further states that on about August 13, she engaged in a conversation with a nurses' aide, other than those aides mentioned hereinabove; that the aide stated that the four tires of a maintenance employee's vehicle were flattened while parked at the maintenance employee's residence; that the third employee witness has no knowledge as to how the aide obtained this information; that the aide had no knowledge as to the date or place where the incident occurred; that the aide stated that the maintenance employee had no knowledge as to the identity of the individual(s) responsible for the incident; that neither the aide nor the third employee witness have any knowledge as to the identity of the individual(s) responsible for the incident; that the employee witness has no knowledge that the incident was related to the organizing campaign.

The fourth employee witness presented by the Employer with respect to the conduct considered herein states in a sworn statement that in July she engaged in conversations with fellow employees at the Employer's facility; that she does not recall the names of the employees; that during such conversation she was advised that in July, the batteries of three employee vehicles were stolen while parked at the Employer's facility; that the employee witness does not know the identity of the victims; that she has no knowledge as to whether the victims supported the Petitioner; and that she has no knowledge as to whether such incidents were related to the Petitioner's organizing campaign. The fourth employee witness states in a sworn statement that on about August 18, she engaged in a conversation with the aide who spoke to the second employee witness hereinabove; that during such conversation, the aide stated that the aide's vehicle had been dented; that the aide did not know the specific date or location that the damage had been in-

curred; that the aide had no knowledge as to the identity of the individual(s) responsible for the incident or whether such incident was related to the Petitioner's organizing campaign; that the aide stated that the aide had supported the Petitioner in the election conducted herein.

The investigation disclosed that the employee whose front windshield was smashed signed an authorization card on behalf of the Petitioner prior to the vandalism to the car; that the employee whose vehicle was dented also prior to the vandalism to the car signed an authorization card on behalf of the Petitioner and was a member of the Petitioner's organizing committee; and that the employee whose vehicle's tires were flattened did not sign an authorization card on behalf of the Petitioner.

The Employer failed to present, and the investigation failed to adduce, evidence that the employees mentioned hereinabove were victims of repeated incidents of vandalism or any conduct other than what is considered herein, or evidence as to the identity of the individual(s) responsible for the aforementioned vandalism to employee vehicles.

The Petitioner denies that it engaged in the conduct alleged herein, and in support of its position, presented Organizer Brown and Vice President Lucas who each stated in their respective sworn statements that no representative or agent of the Petitioner engaged in vandalism of employee vehicles; that the Petitioner learned of the vandalism from employees subsequent to the conduct of the election herein; and that the Petitioner did not authorize, condone or ratify the conduct alleged herein.

In these circumstances, the undersigned concludes that the conduct considered herein does not provide a basis upon which the election may be set aside. The Employer did not present, and the investigation failed to disclose evidence that the conduct is attributable to the Petitioner. *Beaird-Poulan Division, Emerson Electric Company*, 247 NLRB 1365, 1380, 1381 (1980). Further, the vandalism, if it occurred, is not so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible. *Owens-Corning Fiberglas Corporation*, 179 NLRB 350 (1969); *American Enka Company, a Division of Akzona Incorporated*, 231 NLRB 1335, 1343 (1977); *Monroe Auto Equipment Company, Hartwell Division*, 186 NLRB 90 (1970).

Accordingly, the undersigned recommends that Part G be overruled.

Assuming, *arguendo*, that all the conduct alleged in Other Acts and Conduct Not Specifically Alleged did occur, the undersigned further concludes that the totality of such conduct does not provide a basis upon which the election may be set aside. *Central Photocolor Company, Incorporated*, 195 NLRB 839 (1972); *Salem No. 1, Inc. d/b/a The Seville, supra*.

Accordingly, the undersigned further recommends that Other Acts and Conduct Not Specifically Alleged be overruled in its entirety.

CONCLUSIONS AND RECOMMENDATIONS

Having recommended that the Employer's objections be overruled in their entirety and having recommended

³ Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, DC. Exceptions must be received by the Board in Washington by October 4, 1982.

Under the provisions of Sec. 102.69(g) of the Board's rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the Report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the

that Other Acts and Conduct Not Specifically alleged be overruled *in seriatim* and *in toto* and the investigation having failed to disclose evidence of other conduct which would provide a basis upon which the election may be set aside, it is further recommended that a Certification of Representative issue.³

party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.